

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application by Verizon Maryland, Inc.,)	
Verizon Washington, D.C., Inc., Verizon)	
West Virginia, Inc., Bell Atlantic)	
Communications, Inc. (d/b/a Verizon Long)	WC Docket No. 02-384
Distance), NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions), Verizon)	
Global Networks, Inc., and Verizon Select)	
Services, Inc. for Authorization to Provide)	
In-Region, InterLATA Services in Maryland,)	
Washington, D.C. and West Virginia)	
)	

**OPPOSITION OF XSPEDIUS
MANAGEMENT CO., LLC**

Xspedius Management Co., LLC (“Xspedius”), by its attorneys, hereby submits these comments in opposition to the Application filed by Verizon Maryland, Inc., Verizon Washington, D.C., Inc., Verizon West Virginia, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc. (collectively “Verizon”) for authority to provide in-region interLATA services in the states of Maryland, Washington, D.C., and West Virginia, pursuant to Section 271 of the Communications Act of 1934, as amended.¹ As Xspedius does not provide service in West Virginia, these comments are limited to the District of Columbia and Maryland.

¹ 47 U.S.C. § 271. *See Comments Requested on the Application by Verizon Maryland, Verizon Washington, D.C., and Verizon West Virginia for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Public Notice, WC Docket No. 02-384, DA 02-3511 (2002).

I. OVERVIEW

Xspedius is an integrated communications provider headquartered in O’Fallon, Missouri. In 2002, Xspedius acquired substantially all of the assets of e.spire Communications, Inc. (“e.spire”) in the District of Columbia and Maryland, among other places. At present, Xspedius has a footprint that spans 20 states, plus the District of Columbia, and more than 3,500 route miles of fiber in a total of 37 markets, including Atlanta, Dallas/Ft. Worth, Houston, Fort Lauderdale/Miami/West Palm Beach, Tampa, and Washington, DC/Northern Virginia.

Since June 1, 2002, Verizon has utilized but refused to pay for transport and termination services provided by Xspedius for both local voice traffic (compensable under section 251(b)(5) of the Act) and Internet Service Provider (“ISP”)–bound traffic.² As demonstrated below, Verizon’s unilateral refusal to compensate Xspedius for transporting and terminating local voice traffic violates section 251(b)(5) of the Act, and therefore checklist item 13. As demonstrated in the attached table, Verizon’s unilateral withholding of monies owed Xspedius for local transport and reciprocal compensation totals over \$1.5 million – a significant sum to Xspedius (if not to Verizon). Therefore, the Commission should, at a minimum, reject Verizon’s application for the District of Columbia and Maryland until Verizon demonstrates that it has made reciprocal compensation payments, and has demonstrated to the Commission that it is dedicated to making regular payments in the future.³

² Neither the Maryland nor the D.C. agreements exclude ISP-bound traffic from the definition of local voice so there is no ISP-bound traffic issue.

³ Xspedius is engaged in ongoing efforts to settle this dispute but settlement discussions to date have proven fruitless. Xspedius will continue to engage in negotiations and is hopeful that a settlement of these issues can be reached with Verizon.

II. BY UNILATERALLY WITHHOLDING RECIPROCAL COMPENSATION PAYMENTS FOR THE TRANSPORT OF LOCAL VOICE TRAFFIC, VERIZON CANNOT SATISFY CHECKLIST ITEM 13

Section 271(c)(2)(B)(xiii) of the Act obligates Verizon to pay reciprocal compensation to Xspedius and other CLECs for the transport and termination of local voice traffic in accordance with section 252(d)(2).⁴ Pursuant to section 252(d)(2)(A), Verizon must compensate Xspedius for the costs associated with the transport and termination of calls that Verizon sends to Xspedius. As the Commission recently noted in the Virginia Arbitration Order, “all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs’ network for termination.”⁵ Moreover, the Commission’s implementing rules regarding reciprocal compensation expressly permit carriers, such as Xspedius, to recover from Verizon “the costs of the proportion of trunk capacity used by [Verizon] to send traffic” to Xspedius.⁶ Verizon, however, has refused to pay these facilities charges for the transport and termination of local traffic, and therefore cannot satisfy checklist item 13.

In addition, since June 1, 2002, Verizon unilaterally has withheld from Xspedius all payments for transport and termination usage charges in the District of Columbia and Maryland.⁷ There can be absolutely no doubt that Verizon’s refusal to pay

⁴ 47 U.S.C. §271(c)(2)(B)(xiii)

⁵ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket 00-218, et al., Memorandum Opinion and Order, ¶ 67 (rel. July 17, 2002) (citation omitted) (“Virginia Arbitration Order”).

⁶ 47 C.F.R. § 51.709(b).

⁷ Amounts owed for local transport and termination prior to May 31, 2002 were settled between Verizon and e.spire Communications Inc. (“e.spire”), a predecessor of

both facilities and usage charges squarely violates checklist item 13. As such, the Commission must reject Verizon's application for interLATA relief in the District of Columbia and in Maryland.

III. VERIZON'S ONGOING UNILATERAL ACTIONS TO WITHHOLD PAYMENTS TO COMPETITORS DEMONSTRATES THAT THE APPLICATION IS CONTRARY TO THE PUBLIC INTEREST

In addition to evaluating whether Verizon satisfies the competitive checklist, the Act obligates the FCC to make an independent determination of whether grant of Verizon's application is consistent with the public interest, convenience, and necessity.⁸ In describing the public interest prong of section 271, the Commission has noted it will consider, among other things, "circumstances presented by the application to ensure that no other relevant factors exist that would frustrate congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected."⁹ Grant of Verizon's application in the District of Columbia and in Maryland would serve to frustrate rather than further the public interest.

Verizon's ability and willingness unilaterally to withhold payments due to competitors for, among other items, transport and termination of local voice traffic, including ISP-bound traffic, demonstrates Verizon's willingness to take action to disrupt its

Xspedius. As noted above, Xspedius acquired the assets of e.spire in the District of Columbia and in Maryland, among other areas.

⁸ 47 U.S.C. § 271(d)(3)(c).

⁹ Application by Verizon Maryland, Inc., Verizon Washington, D.C., Inc., Verizon West Virginia, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia, WC Docket No. 02-214, Memorandum Opinion and Order, Appendix C, ¶ 71 (rel. Oct. 30, 2002).

competitors efforts to succeed in local markets without regard to the law. Verizon's unilateral actions during the pendency of this application are especially troubling, as Verizon is ostensibly on its very best behavior at present. Xspedius fully expects Verizon to become more – rather than less – aggressive with competitors after it receives section 271 authority. Such ongoing action by Verizon would serve only to “frustrate congressional intent that markets be open.”¹⁰

Prior to any Commission finding that Verizon's entry into the in-region, interLATA market in the District of Columbia and in Maryland is consistent with the public interest, the Commission should require Verizon to demonstrate that it is not unilaterally withholding payments to competitors for transport and termination of local voice traffic, including ISP-bound traffic. The Commission should require that Verizon report on all unpaid disputed and undisputed local transport facilities and reciprocal compensation usage invoices with carriers in the states affected. Only after Verizon demonstrates: (i) compliance with the transport and termination rules, including timely and full payment of all undisputed amounts to all carriers; (ii) good faith and fair dealing with competitors on these important issues; and (iii) internal processes and procedures that will guarantee regular, timely payment of all CLEC local transport and reciprocal compensation invoices should the Commission consider finding that reentry of Verizon into long distance in the District of Columbia and Maryland is consistent with the public interest.

The Commission should also make this area a critical focus of future enforcement efforts, including investigations and audits. Otherwise, Verizon's reentry would serve only to frustrate Congress' intent to open local markets and ensure that they remain

¹⁰ *Id.*

open. Verizon is a powerful company, and will become more so once its reentry into the long distance market is effected.

IV. CONCLUSION

For the foregoing reasons, Xspedius respectfully request that the Commission find that Verizon has not complied with section 271 and deny the application accordingly.

Respectfully submitted,

/s/

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